

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 06-0312
Use Tax
For the Year 2004

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ISSUE

I. Use Tax—Agricultural Exemption

Authority: IC § 6-2.5-5-2; 45 IAC 2.2-5-6

Taxpayer protests the Department's assessment of use tax with respect to an item of equipment.

STATEMENT OF FACTS

Taxpayer is an individual who operates a farm. In 2004, Taxpayer purchased a John Deere Gator ("Gator"). A "Gator" is a small utility vehicle. When Taxpayer purchased the Gator, Taxpayer provided an exemption certificate to the retailer. By issuing the exemption certificate, Taxpayer did not pay sales tax at the time of purchase. Subsequently, the Indiana Department of State Revenue ("Department") audited the retailer. Upon audit, the Department noted Taxpayer's exemption certificate, and assessed Taxpayer use tax on the Gator. Taxpayer protested the assessment, the Department conducted a hearing, and this Letter of Findings results.

I. Use Tax—Agricultural Exemption

DISCUSSION

Taxpayer protests the assessment of use tax with respect to the Gator. In particular, Taxpayer argues that he used the Gator for agricultural purposes. Taxpayer further argues that, for personal property taxes, he listed the Gator as "farm equipment inventory (subject to taxing)," rather than as "recreational and/or lawn and garden equipment."

Under IC § 6-2.5-5-2,

- (a) Transactions involving agricultural machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for his direct use in the direct production, extraction, harvesting, or processing of agricultural commodities.
- (b) Transactions involving agricultural machinery or equipment are exempt from the state gross retail tax if:
 - (1) the person acquiring the property acquires it for use in conjunction with the production of food and food ingredients or commodities for sale;

- (2) the person acquiring the property is occupationally engaged in the production of food or commodities which he sells for human or animal consumption or uses for further food and food ingredients or commodity production; and
- (3) the machinery or equipment is designed for use in gathering, moving, or spreading animal waste.

The Indiana Administrative Code, 45 IAC 2.2-5-6, expounds on the exemption provided under IC § 6-2.5-5-2. The regulation states in relevant part:

- (a) In general, all purchases of tangible personal property by persons engaged in the direct production, extraction, harvesting, or processing of agricultural commodities are taxable. (The exemption provided in this regulation [45 IAC 2.2] extends only to agricultural machinery, tools, and equipment.)
- (b) The state gross retail tax shall not apply to sales of agricultural machinery, tools, and equipment to be directly used by the purchaser in the direct production, extraction, harvesting, or processing or [sic.] agricultural commodities.
- (c) Purchasers of agricultural machinery, tools, and equipment to be directly used by the purchaser in the direct production, extraction, harvesting, or processing of agricultural commodities are exempt from tax provided such machinery, tools, and equipment have a direct effect upon the agricultural commodities produced, harvested, etc. Property is directly used in the direct production, extraction, harvesting, or processing of agricultural commodities if the property in question has an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process, i.e. confinement buildings, cooling, heating, and ventilation equipment. The fact that such machinery, tools, or equipment may not touch the commodity or livestock or, by itself, cause a change in the product, is not determinative.
- (d) Exempt purchases:
 - (1) Feeds—Sales of agricultural machinery, tools, and equipment used by the purchaser directly in feeding exempt animals, poultry, etc., are exempt from tax. This exemption does not extend to machinery, equipment, and tools used for the handling, movement, transportation, or storage of feed prior to the actual feeding process.
 - (2) Seeds and plants—Sales of agricultural machinery, tools, and equipment to be used directly by the purchaser to plant seeds and plants purchased exempt from tax are exempt from tax. This exemption does not apply to lawn tractors used to plant grass seed, storage equipment, transportation equipment, or to machinery, tools, or equipment to be incorporated into real estate.
 - (3) Fertilizers—Sales of agricultural machinery, tools, and equipment to be directly used by the purchaser to fertilize crops. This exemption does not apply to storage equipment, transportation equipment, or to machinery, tools, or equipment to be incorporated into real estate.
 - (4) Insecticides and fungicides—Sales of agricultural machinery, tools, and equipment to be directly used by the purchaser to apply insecticides and fungicides are exempt from tax. This exemption does not apply to storage equipment, transportation equipment, or machinery, tools, or equipment to be incorporated into real estate.
 - (5) Other exempt agricultural machinery, tools, and equipment. Sales of other agricultural machinery, tools, and equipment to be directly used by the purchaser in the direct production, extraction, harvesting, or processing or [sic.] agricultural commodities are exempt from tax provided such machinery, tools, and equipment

are directly used in the production process, i.e. they have an immediate effect upon the agricultural commodities being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces agricultural commodities.

...

(8) Machinery, tools, and equipment used to move a crop from the field where it was grown and harvested to equipment for temporary storage or for further processing.

(9) Machinery, tools, and equipment used to move exempt items such as seeds, plants, fertilizers, insecticides, and fungicides from temporary storage to the location where such will be used in an exempt process.

...

(f) "Agricultural machinery, tools, and equipment" as used in this regulation [45 IAC 2.2] refers to machinery, tools, and equipment used on a farm to cultivate, grow, produce, reproduce, harvest, extract or process animals, poultry, and crops used to produce food or agricultural commodities for human or animal consumption (or for further use in producing food or agricultural commodities).

(g) "Direct production, extraction, harvesting or processing agricultural commodities" means action which has an immediate effect on the agricultural commodities being produced by "farming" as defined in Regs. 6-2.5-5-1(010) [45 IAC 2.2-5-1] for a human, animal, or poultry consumption. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces agricultural commodities.

(h) Farmer and farming. Refer to Regs. 6-2.5-5-1(010) [45 IAC 2.2-5-1] for definitions of "farmer" and "farming".

Taxpayer has indicated that the Gator is used for several purposes, and provided an Indiana Form AGQ-100 with respect to Taxpayer's use of the Gator.

While the Department accepts Taxpayer's contentions that he used the Gator as part of Taxpayer's agricultural operations and that he used the Gator only for agricultural purposes, Taxpayer did not meet the "directly used" in the "direct production" statutory elements necessary to claim an agricultural machinery exemption. There is no evidence that the vehicle was "directly used" in the "direct production" of agricultural commodities.

FINDING

Taxpayer's protest is denied.